

Marquette Law Review

Volume 15

Issue 4 *June 1931*

Article 6

Bills and Notes: Banking

Elisheva Iushewitz

Follow this and additional works at: <http://scholarship.law.marquette.edu/mulr>



Part of the [Law Commons](#)

Repository Citation

Elisheva Iushewitz, *Bills and Notes: Banking*, 15 Marq. L. Rev. 224 (1931).

Available at: <http://scholarship.law.marquette.edu/mulr/vol15/iss4/6>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

NOTES AND COMMENT

BANKS—CHECKS—DEPOSITORS. *Wussow v Badger State Bank of Milwaukee*, 234 N.W. 721. Demerath, an employee of plaintiff, forged plaintiff's signature on \$16,000 worth of checks and presented them to defendant bank where he received value and such was debited to plaintiff's account. The forgery was a poor one so that reasonable care exercised by either the bank or plaintiff would have disclosed it. Yet the bank paid the sum demanded and the plaintiff neglected to examine his checks until a year had elapsed. The bank was relieved of liability for the checks paid out before the year began to run, but as to the rest was held liable to the plaintiff. Section 116.28 Wis. Statutes holds that no bank shall be liable to any depositor for the payment by it of a forged or raised check unless action therefor shall be brought against such bank within one year after the return to the depositor by such bank of the check so forged or raised, as a voucher.

Deposits made in a bank constitute the bank the debtor of the depositor in the amount represented by the aggregate deposits, less such amounts as have been paid to the depositor or to others upon his authorization, 200 Wis. 200 *Peart v. Schwenker*. Because there exists a contractual relationship between the bank and the depositor, the bank is in the first instance bound to restore to the depositor all amounts paid on forged checks although it was free from negligence in not detecting the forgery. *Endlich v. Black Creek Bank*, 200 Wis. 175. Because it is held that a bank is bound to know the signature of its depositors and must take every precaution to determine the genuineness of a signature purporting to be that of a particular depositor and if it does not, pays such checks at its peril. *McCormack v. Bank*, 203 Iowa 833.

The bank, the defendant in this case, contends that notwithstanding this rule the negligence of the plaintiff relieved it from liability on all checks after the first payment of a forged check was made. Because, it further contends the bank having paid the first forged check and meeting no objection from plaintiff for having so done assumed the signature to be good and had no reason to deny the payment of subsequent demands of this forger. As to this contention it was held that the bank was correct. The depositor was lacking in his duty in not examining the returned checks to determine whether he issued such checks to Demerath. But here not only was the depositor negligent but the bank itself was, and before the bank can deride the depositor it must itself assert sufficient care. But from the facts in the case it is more than obvious that the slightest care on the part of the bank would have with little difficulty determined the signature as a forged one and thus put itself on guard from future demands of Demerath. This the bank neglected to do, as did the plaintiff until one year later.

The bank had no defense other than the statute already cited and had to meet the demands of the plaintiff.

ELISHEVA IUSHEWITZ

AUTOMOBILE LIABILITY INSURANCE—RECOVERY OF ASSURED IN EXCESS OF POLICY LIMITS FOR BAD FAITH OF INSURANCE COMPANY. The Supreme Court of Wisconsin in the late decision of *Hilker v. Western Auto Insurance Company* handed down recently upon rehearing, qualified the decisions of the Wisconsin *Zinc Company v. Fidelity & Deposit Company of Maryland*, 162 Wis. 39, by finding contra to that decision that the negligence of the insurance company in investigating and adjusting a personal injury claim is indicative of bad faith. The court said that the terms negligence and bad faith may be used interchangeably—that fraud is not the only ground of bad faith (Wisconsin *Zinc Company* case) but that negligence is too (*Hilker* case).

In the *Hilker* case Fred C. Hilker brought an action against the Western Auto Insurance Company to recover the excess over the coverage of an auto indemnity policy which was paid by him to satisfy a judgment for damages for injuries caused when his automobile struck a child. The defendant company issued a policy of auto indemnity insurance to the plaintiff which limited its liability for injury to one person to \$5,000. The policy gave the defendant insurance company full and complete control of the handling and adjustment of all claims for liability made against the assured and provided that the insured, to quote the exact wording of the policy, "Shall not interfere in any negotiations for settlement or in any legal procedure." The defendant took full charge of the two actions brought against the plaintiff, Hilker. These actions resulted in a verdict against him for \$10,500—\$5,500 over his policy limits. The plaintiff paid these judgments, and brought an action to recover the \$5,500 that he paid in excess of his policy limits, alleging that the defendant company acted in bad faith in conducting the defense, and in withholding from him information as to the accident and in failing to settle the actions for within \$5,000, the amount of the policy limit, although they could have done so. The jury found that the defendant company could have settled the two actions against the plaintiff Hilker before they were started as well as during their trial for less than \$5,000, that the defendant company acted in bad faith in failing to make such settlements and in its manner of handling the claims which were against the plaintiff Hilker and in dealing with the plaintiff Hilker.

The defendant on appeal contended that although the complaint alleged bad faith the proof was that of negligence, and so would not